

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,
P.O. Box 710
Tucson, AZ 85702-0710

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,
1200 Pennsylvania Avenue, NW
Washington, DC 20460

U.S. FISH AND WILDLIFE SERVICE,
1849 C Street, NW, Room 3358
Washington, DC 20240

U.S. DEPARTMENT OF THE INTERIOR,
1849 C Street, N.W.
Washington DC 20240

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
1401 Constitution Avenue NW, Room 5128
Washington, DC 20230

Defendants.

Civil Action No.: 19-1315

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**(Freedom of Information Act, 5 U.S.C. §
552)**

INTRODUCTION

1. In this action, Plaintiff Center for Biological Diversity (“Center”) challenges the failure and refusal of Defendants, U.S. Environmental Protection Agency (“EPA”), U.S. Fish & Wildlife Service (“FWS”), U.S. Department of the Interior (“DOI”), and the National Oceanic and Atmospheric Administration (“NOAA”), to provide records to the Center in response to requests for records submitted on May 14, 2018, November 1, 2018, and November 20, 2018 for

which there are no applicable exemptions, in violation of the Freedom of Information Act, 5 U.S.C. § 552, as amended (“FOIA”).

2. The Center’s FOIA requests seek records connected with the Defendants’ communications, meetings, and information regarding pesticide actual use and usage data. The Defendants’ delays in providing records in response to the FOIA requests at issue may be placing imperiled species at risk from EPA’s authorization of the use of certain pesticides without ensuring that their use will not jeopardize endangered or threatened species.

3. The Center seeks declaratory relief establishing that Defendants have violated FOIA. The Center also seeks injunctive relief ordering Defendants to provide the Center with all responsive records without further delay.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

5. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

6. Declaratory relief is appropriate under 28 U.S.C. § 2201.

7. Injunctive relief is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202.

PARTIES

8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States that works to protect native wildlife species and their habitats, including from exposure to toxic chemicals. The Center has

more than 69,500 members. The Center and its members are harmed by Defendants' violations of FOIA because such violations preclude the Center from gaining a full understanding of the harmful environmental and human health effects of pesticides containing chlorpyrifos, diazinon, and malathion as well as an understanding of the regulatory approach to decisions to register pesticides in light of federal agency duties under the Endangered Species Act, 16 U.S.C. §§ 1531-1544. Defendants' failure to comply with FOIA harms the Center's ability to provide full, accurate and current information to the public on a matter of public interest. Absent this information, the Center cannot advance its mission to protect native species and their habitat.

9. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY ("EPA") is an independent agency of the U.S. government. EPA is in possession and control of records responsive to the Center's FOIA requests, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f) and is responsible for fulfilling the Center's FOIA request to it.

10. Defendant U.S. FISH AND WILDLIFE SERVICE ("FWS") is an agency of the U.S. government within the Department of the Interior. The Fish and Wildlife Service is in possession and control of records responsive to the Center's FOIA requests, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f) and is responsible for fulfilling the Center's FOIA request to it.

11. Defendant U.S. DEPARTMENT OF THE INTERIOR ("DOI") is an agency of the U.S. government. DOI is in possession and control of records responsive to the Center's FOIA requests, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f) and is responsible for fulfilling the Center's FOIA request to it.

12. Defendant NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ("NOAA") is a United States federal agency within the Department of Commerce. NOAA is in

possession and control of records responsive to the Center's FOIA requests, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f) and is responsible for fulfilling the Center's FOIA request to it.

STATUTORY BACKGROUND

13. FOIA requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions applies. 5 U.S.C. § 552.

14. FOIA places the burden on the agency to show that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

15. Within 20 working days of receiving a request, an agency must determine if it will release requested records and notify the requester of its determination and the reasons therefor, the right to seek assistance from the FOIA Public Liaison, and the right to appeal an adverse agency determination. *Id.* § 552(a)(6)(A)(i).

16. In "unusual circumstances," an agency may extend the time to make a determination by no more than 10 additional working days, but it must provide written notice to the requester setting forth the unusual circumstances for the extension and "the date on which a determination is expected to be dispatched." *Id.* § 552(a)(6)(B)(i). If the agency provides written notice that the request cannot be processed within the specified time limit, the agency shall provide "an opportunity to limit the scope of the request so that it may be processed within" the statutory time limit or "an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request" and shall make available its FOIA Public Liaison" to "assist in the resolution of any disputes between the requester and the agency." *Id.* § 552(a)(6)(B)(ii).

17. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate records that are responsive to the FOIA request.

Id. § 552(a)(3)(C)-(D).

18. FOIA requires federal agencies to promptly disclose requested records. *Id.* § 552(a)(3)(A), (a)(6)(C)(i).

19. In certain limited instances, records may be withheld pursuant to nine specific exemptions. *Id.* § 552(b). These exemptions must be narrowly construed in light of FOIA's dominant objective of disclosure, not secrecy.

20. FOIA provides this Court jurisdiction "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." *Id.* § 552(a)(4)(B).

STATEMENT OF FACTS

Request to EPA (EPA-HQ-2018-007662)

21. On May 14, 2018, the Center submitted to EPA, Office of Pesticide Programs, a FOIA request for all records, from January 1, 2018 to the date of search, "that EPA has generated in connection with the actual use of chlorpyrifos, diazinon, and/or malathion". Agency FOIA Tracking No. EPA-HQ-2018-007662.

22. On May 14, 2018, EPA sent an automatic acknowledgement of the receipt of the Center's FOIA request.

23. On June 12, 2018, EPA wrote to the Center that the "Agency will not be able to conduct a proper search even for this relativity [sic] short period of time as your request is currently written. I'm hoping The Center could at least identify specific Agency personnel and/or more specific search criteria."

24. On June 18, 2018, the Center responded by providing EPA with two letters, one from FWS to EPA and one from EPA to FWS, that described the actual use or usage information that the Center had requested.

25. On June 18, 2018, EPA responded that it would “proceed with searching for the information/records the Center is seeking,” and stated it would contact the Center “within the next 2 weeks to provide an anticipated completion schedule.” EPA did not provide an anticipated completion schedule.

26. EPA has not provided the Center with any records in response to its May 14, 2018 FOIA request (EPA-HQ-2018-007662).

27. EPA has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed the Center that it may appeal any specific adverse determination within the relevant time periods in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

28. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

29. EPA has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its May 14, 2018 FOIA request.

30. The Center has been required to expend resources to prosecute this action.

Request to EPA (EPA-HQ-2019-001072)

31. On November 1, 2018, the Center submitted to EPA a FOIA request for, from November 14, 2017 to the date of search, “(1) All records of communication between EPA and any malathion registrants discussing malathion usage data as described in the Gary Frazer [sic]. See Attachment A (Gary Frazer’s Declaration); and (2) all records of communication between

EPA and any other outside stakeholder organization including but not limited to the American Mosquito Control Association, discussing malathion usage data described in the Gary Frazer [sic].” Agency FOIA Tracking No. EPA-HQ-2019-001072.

32. On November 1, 2018, EPA sent an automatic acknowledgement of the receipt of the Center’s FOIA request.

33. On December 3, 2018, EPA wrote to the Center stating, “We are hoping you could provide names of the EPA staff/offices in which we could limit our search for emails and other communication records,” even though a Subject Matter Expert (SME) had already determined “there would be only a small number of staff that would potentially have responsive records.” EPA stated that once the Center had clarified its request and EPA had an agreed upon number of OPP staff to conduct the search, EPA would provide an estimated completion date.

34. On December 5, 2018, the Center responded, objecting to the clarification request, but, nonetheless, offering a list of EPA staff invited to attend a Pesticide Use/Usage Meeting on Monday, February 26, 2018.

35. On December 6, 2018, EPA stated it would submit the search with the names the Center provided and that it “should get a pre-case assessment on the number of records that are initially collected as being potentially responsive within the next 10 business days, if not sooner.”

36. EPA has not provided a “pre-case assessment” to the Center.

37. EPA has not provided to the Center any records responsive to its November 1, 2018 FOIA request (EPA-HQ-2019-001072).

38. EPA has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed

the Center that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

39. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

40. EPA has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its November 1, 2018 FOIA request.

41. The Center has been required to expend resources to prosecute this action.

Request to FWS (FWS-2019-00145)

42. On November 1, 2018, the Center submitted to FWS a FOIA request for all records, from November 14, 2017 to the date of search, generated in connection with communications discussing malathion usage data as described in the Gary Frazer declaration (included as Attachment A to the request) between FWS and any malathion registrants, between FWS and any other outside stakeholder organization, between FWS and the Bureau of Land Management, and between FWS and the U.S. Forest Service. Agency FOIA Tracking No. FWS-2019-00145.

43. On November 8, 2018, FWS sent an email acknowledging receipt of the request, stating, “You will receive a formal acknowledgement shortly.”

44. On November 16, 2018, FWS sent a letter to the Center stating FWS had received the Center’s FOIA request and had assigned it control number FWS-2019-00145. The letter indicated that FWS would process the request within 21 to 60 workdays.

45. To date, FWS has not provided the Center with any records in response to its November 1, 2018 FOIA request.

46. FWS has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed the Center that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

47. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

48. FWS has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its November 1, 2018 FOIA request.

49. The Center has been required to expend resources to prosecute this action.

Request to EPA (EPA-HQ-2019-001581)

50. On November 20, 2018, the Center submitted to EPA a FOIA request for, from November 14, 2017 to the date of search, “all records of communication between EPA and the [FWS] mentioning or including chlorpyrifos and diazinon usage data.” Agency FOIA Tracking No. EPA-HQ-2019-001581 .

51. On November 20, 2018, EPA sent an automatic acknowledgement of the receipt of the Center’s FOIA request.

52. On December 19, 2018, EPA wrote to the Center stating that EPA was “diligently processing your request” and that it anticipated “having a pre-case assessment on the number of potentially responsive records collected within 2-3 weeks, if not sooner. At which time, we will provide you an estimated completion date to process this request, based on the number of records collected.”

53. On February 22, 2019, EPA wrote to the Center, stating EPA had collected 5,313 records potentially responsive to the request, which were queued up for processing and needed to be reviewed for responsiveness and privilege.

54. On March 21, 2019, the Center requested that EPA provide an estimated date of completion for EPA-HQ-2019-001581.

55. On March 21, 2019, EPA responded that an EPA employee would get back to the Center early next week.

56. On April 16, 2019, the Center wrote to EPA stating, “as required by 5 U.S.C. § 552(a)(7)(B)(ii), we request that EPA immediately provide an estimated date by which we can expect completion of the agency’s unlawfully delayed response to our FOIA request.” EPA has not provided an estimated date of completion.

57. EPA has not provided the Center with any records in response to its November 1, 2018 FOIA request (EPA-HQ-2019-001581).

58. EPA has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed the Center that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

59. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

60. EPA has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its November 20, 2018 FOIA request.

61. The Center has been required to expend resources to prosecute this action.

Request to FWS (FWS-2019-00186)

62. On November 20, 2018, the Center submitted to FWS a FOIA request for all records, from November 14, 2017 to the date of search: “of communication between FWS and the [EPA] mentioning or including chlorpyrifos and diazinon usage data.” Agency FOIA Tracking No. FWS-9-00186.

63. On November 21, 2018, FWS emailed the Center, stating “Your request has been forwarded to our Headquarters Ecological Services Office for processing. You will receive a formal acknowledgement shortly.”

64. On November 27, 2018, FWS sent a letter to the Center stating that FOIA request had been assigned control number FWS-2019-00186, and asserting the request is in the complex processing track, meaning it would be processed in 21 to 60 workdays.

65. To date, FWS has not provided the Center with any records in response to its November 20, 2018 FOIA request.

66. FWS has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed the Center that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

67. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

68. FWS has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its November 20, 2018 FOIA request.

69. The Center has been required to expend resources to prosecute this action.

Request to EPA (EPA-HQ-2019-001595)

70. On November 20, 2018, the Center submitted to EPA a FOIA request for: “All meeting notes and other records generated in connection with the meeting occurring on or about February 26, 2018 mentioning or including pesticide use or usage. *See Attachment A (February 26, 2018 Pesticide Use/Usage Meeting).*” Agency FOIA Tracking No. EPA-HQ-2019-001595.

71. On November 20, 2018, EPA sent an automatic acknowledgement of the receipt of the Center’s FOIA request, and assigned the request Tracking Number EPA-HQ-2019-001595.

72. On January 31, 2019, EPA wrote, that it had identified “approximately 2,000 email and records as being potentially responsive” and that it hoped to provide the Center an “estimated completion time for this request in the next 2-3 weeks, if not sooner.”

73. EPA has not provided the Center with any records in response to its November 20, 2018 FOIA request (EPA-HQ-2019-001595).

74. EPA has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed the Center that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

75. EPA has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its November 20, 2018 FOIA request.

76. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

77. The Center has been required to expend resources to prosecute this action.

Request to FWS (FWS-2019-00182)

78. On November 20, 2018, the Center submitted to FWS a FOIA request for: “All meeting notes and other records generated in connection with the meeting occurring on or about February 26, 2018 mentioning or including pesticide use or usage. *See Attachment A (February 26, 2018 Pesticide Use/Usage Meeting)*. Agency FOIA Tracking No. FWS-2019-00182.

79. On November 26, 2018, FWS sent the Center an e-mail stating FWS had received the FOIA request, and that they would be sending a formal acknowledgment shortly.

80. On November 27, 2018, FWS sent a letter formally acknowledging the request and assigning it control number FWS-2019-00182, and asserting the request is in the complex processing track, meaning it would be processed in 21 to 60 workdays.

81. To date, the Service has not provided the Center with any records in response to its November 20, 2018 FOIA request.

82. FWS has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed the Center that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

83. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

84. FWS has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its November 20, 2017 FOIA request.

85. The Center has been required to expend resources to prosecute this action.

Request to DOI (OS- 2019-00220)

86. On November 20, 2018, the Center submitted to DOI, a FOIA request for: “All meeting notes and other records generated in connection with the meeting occurring on or about February 26, 2018 mentioning or including pesticide use or usage. See Attachment A (February 26, 2018 Pesticide Use/Usage Meeting).” Agency FOIA Tracking No. OS-2019-00220.

87. On November 30, 2018, DOI sent a letter acknowledging receipt of the Center’s FOIA request, assigning the request control number OS-2019-00220. The letter stated, “we are taking a 10-workday extension under 43 C.F.R. § 2.19” and placed the Center’s request under the “Normal” processing track. See 43 C.F.R. § 2.15.” Under 43 C.F.R. § 2.15, a “normal” processing track takes 6 to 20 workdays to process. DOI stated further, that the Center could “expect to hear from us promptly regarding the outcome of this search.”

88. To date, DOI has not provided the Center with any records in response to its November 20, 2018 FOIA request.

89. DOI has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed the Center that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

90. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

91. DOI has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its November 20, 2017 FOIA request.

92. The Center has been required to expend resources to prosecute this action.

Request to NOAA (DOC-NOAA-2019-000299)

93. On November 20, 2018, the Center submitted to NOAA a FOIA request for: “All meeting notes and other records generated in connection with the meeting occurring on or about February 26, 2018 mentioning or including pesticide use or usage. *See Attachment A (February 26, 2018 Pesticide Use/Usage Meeting).*” Agency FOIA Tracking No. DOC-NOAA-2019-000299.

94. On November 20, 2018, NOAA sent an automatic acknowledgement of the receipt of the Center’s FOIA request, and assigned the request Tracking Number DOC-NOAA-2019-000299.

95. To date, NOAA has not provided the Center with any records in response to its November 20, 2018 FOIA request.

96. NOAA has not provided a determination to the Center describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed the Center that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(a)(i) or 5 U.S.C. § 552(a)(6)(B).

97. The Center is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

98. NOAA has no lawful basis under FOIA for its delay and has provided no lawful basis to withhold or redact the records the Center requested in its November 20, 2017 FOIA request.

99. The Center has been required to expend resources to prosecute this action.

CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF

EPA Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request
EPA-HQ-2018-007662

100. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

101. The Center properly requested records within the control of EPA through its May 14, 2018 FOIA request, EPA-HQ-2018-007662, to the agency.

102. The Center has a statutory right to a lawful final determination from EPA on the Center's FOIA Request, EPA-HQ-2018-007662, in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

103. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

104. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions.

105. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

106. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

SECOND CLAIM FOR RELIEF

EPA Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request EPA-HQ-2018-007662

107. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

108. The Center has a statutory right to have EPA process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

109. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

110. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

111. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

THIRD CLAIM FOR RELIEF

EPA Failed to Disclose All Records that Are Responsive to the Center's FOIA Request EPA-HQ-2018-007662

112. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

113. The Center has a statutory right to the records it requested, and EPA has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. §

552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

114. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

115. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

116. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

FOURTH CLAIM FOR RELIEF

EPA Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request EPA-HQ-2019-001072

117. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

118. The Center properly requested records within the control of EPA through the Center's November 1, 2018 FOIA request, EPA-HQ-2019-001072, to the agency.

119. The Center has a statutory right to a lawful final determination from EPA on the Center's FOIA Request, EPA-HQ-2019-001072, in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

120. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

121. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions.

122. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

123. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

FIFTH CLAIM FOR RELIEF

EPA Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request EPA-HQ-2019-001072

124. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

125. The Center has a statutory right to have EPA process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

126. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

127. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

128. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

SIXTH CLAIM FOR RELIEF

EPA Failed to Disclose All Records that Are Responsive to the Center's FOIA Request EPA-HQ-2019-001072

129. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

130. The Center has a statutory right to the records it requested, and EPA has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. § 552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

131. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

132. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

133. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

SEVENTH CLAIM FOR RELIEF

FWS Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request FWS-2019-00145

134. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

135. The Center properly requested records within the control of FWS through its November 1, 2018 FOIA request, FWS-2019-00145, to the agency.

136. The Center has a statutory right to a lawful final determination from FWS on the Center's FOIA Request, FWS-2019-00145, in a manner that complies with FOIA. FWS has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

137. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

138. The Center's organizational activities will be adversely affected if FWS is allowed to continue violating FOIA's disclosure provisions.

139. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

140. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

EIGHTH CLAIM FOR RELIEF

FWS Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request FWS-2019-00145

141. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

142. The Center has a statutory right to have FWS process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). FWS violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

143. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

144. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

145. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

NINTH CLAIM FOR RELIEF

FWS Failed to Disclose All Records that Are Responsive to the Center's FOIA Request FWS-2019-00145

146. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

147. The Center has a statutory right to the records it requested, and FWS has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. § 552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). FWS has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

148. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

149. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

150. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TENTH CLAIM FOR RELIEF

EPA Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request EPA-HQ-2019-001581

151. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

152. The Center properly requested records within the control of EPA through its November 20, 2018 FOIA request, EPA-HQ-2019-001581, to the agency.

153. The Center has a statutory right to a lawful final determination from EPA on the Center's FOIA Request, EPA-HQ-2019-001581, in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

154. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

155. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions.

156. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

157. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

ELEVENTH CLAIM FOR RELIEF

EPA Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request EPA-HQ-2019-001581

158. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

159. The Center has a statutory right to have EPA process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

160. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

161. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

162. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWELFTH CLAIM FOR RELIEF

EPA Failed to Disclose All Records that Are Responsive to the Center's FOIA Request EPA-HQ-2019-001581

163. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

164. The Center has a statutory right to the records it requested, and EPA has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. § 552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

165. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

166. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

167. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

THIRTEENTH CLAIM FOR RELIEF

FWS Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request FWS-2019-00186

168. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

169. The Center properly requested records within the control of FWS through its November 20, 2018 FOIA request, FWS-2019-00186, to the agency.

170. The Center has a statutory right to a lawful final determination from FWS on the Center's FOIA Request, FWS-2019-00186, in a manner that complies with FOIA. FWS has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

171. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

172. The Center's organizational activities will be adversely affected if FWS is allowed to continue violating FOIA's disclosure provisions.

173. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

174. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

FOURTEENTH CLAIM FOR RELIEF

FWS Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request FWS-2019-00186

175. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

176. The Center has a statutory right to have FWS process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). FWS violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

177. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

178. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

179. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

FIFTEENTH CLAIM FOR RELIEF

FWS Failed to Disclose All Records that Are Responsive to the Center's FOIA Request FWS-2019-00186

180. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

181. The Center has a statutory right to the records it requested, and FWS has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. §

552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). FWS has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

182. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

183. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

184. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

SIXTEENTH CLAIM FOR RELIEF

EPA Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request EPA-HQ-2019-001595

185. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

186. The Center properly requested records within the control of EPA through its November 20, 2018 FOIA request, EPA-HQ-2019-001595, to the agency.

187. The Center has a statutory right to a lawful final determination from EPA on the Center's FOIA Request, EPA-HQ-2019-001595, in a manner that complies with FOIA. EPA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

188. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

189. The Center's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's disclosure provisions.

190. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

191. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

SEVENTEENTH CLAIM FOR RELIEF

EPA Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request EPA-HQ-2019-001595

192. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

193. The Center has a statutory right to have EPA process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). EPA violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

194. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

195. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

196. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

EIGHTEENTH CLAIM FOR RELIEF

EPA Failed to Disclose All Records that Are Responsive to the Center's FOIA Request EPA-HQ-2019-001595

197. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

198. The Center has a statutory right to the records it requested, and EPA has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. § 552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). EPA has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

199. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to EPA in the foreseeable future.

200. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, EPA will continue to violate the Center's rights to receive public records under FOIA.

201. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

NINETEENTH CLAIM FOR RELIEF

FWS Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request FWS-2019-00182

202. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

203. The Center properly requested records within the control of FWS through its November 20, 2018 FOIA request, FWS-2019-00182, to the agency.

204. The Center has a statutory right to a lawful final determination from FWS on the Center's FOIA Request, FWS-2019-00182, in a manner that complies with FOIA. FWS has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

205. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

206. The Center's organizational activities will be adversely affected if FWS is allowed to continue violating FOIA's disclosure provisions.

207. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

208. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWENTIETH CLAIM FOR RELIEF

FWS Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request FWS-2019-00182

209. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

210. The Center has a statutory right to have FWS process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). FWS violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

211. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

212. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

213. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWENTY-FIRST CLAIM FOR RELIEF

FWS Failed to Disclose All Records that Are Responsive to the Center's FOIA Request FWS-2019-00182

214. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

215. The Center has a statutory right to the records it requested, and FWS has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. § 552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). FWS has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

216. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to FWS in the foreseeable future.

217. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's rights to receive public records under FOIA.

218. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWENTY-SECOND CLAIM FOR RELIEF

DOI Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request OS-2019-00220

219. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

220. The Center properly requested records within the control of DOI through its November 20, 2018 FOIA request, OS-2019-00220, to the agency.

221. The Center has a statutory right to a lawful final determination from DOI on the Center's FOIA Request, OS-2019-00220, in a manner that complies with FOIA. DOI has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

222. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to DOI in the foreseeable future.

223. The Center's organizational activities will be adversely affected if DOI is allowed to continue violating FOIA's disclosure provisions.

224. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, DOI will continue to violate the Center's rights to receive public records under FOIA.

225. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWENTY-THIRD CLAIM FOR RELIEF

DOI Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request OS-2019-00220

226. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

227. The Center has a statutory right to have DOI process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). DOI violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

228. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to DOI in the foreseeable future.

229. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, DOI will continue to violate the Center's rights to receive public records under FOIA.

230. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWENTY-FOURTH CLAIM FOR RELIEF

DOI Failed to Disclose All Records that Are Responsive to the Center's FOIA Request OS-2019-00220

231. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

232. The Center has a statutory right to the records it requested, and DOI has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. §

552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). DOI has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

233. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to DOI in the foreseeable future.

234. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, DOI will continue to violate the Center's rights to receive public records under FOIA.

235. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWENTY-FIFTH CLAIM FOR RELIEF

NOAA Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Request DOC-NOAA-2019-000299

236. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

237. The Center properly requested records within the control of NOAA through its November 20, 2018 FOIA request, DOC-NOAA-2019-000299, to the agency.

238. The Center has a statutory right to a lawful final determination from NOAA on the Center's FOIA Request, DOC-NOAA-2019-000299, in a manner that complies with FOIA. NOAA has violated the Center's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

239. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to NOAA in the foreseeable future.

240. The Center's organizational activities will be adversely affected if NOAA is allowed to continue violating FOIA's disclosure provisions.

241. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

242. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWENTY-SIXTH CLAIM FOR RELIEF

NOAA Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Request DOC-NOAA-2019-000299

243. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

244. The Center has a statutory right to have NOAA process the Center's FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). NOAA violated the Center's rights in this regard when it unlawfully failed to conduct an adequate search that was reasonably calculated to locate all records that are responsive to the Center's FOIA request.

245. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to NOAA in the foreseeable future.

246. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

247. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

TWENTY-SEVENTH CLAIM FOR RELIEF

**NOAA Failed to Disclose All Records that Are Responsive to the Center's
FOIA Request DOC-NOAA-2019-000299**

248. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

249. The Center has a statutory right to the records it requested, and NOAA has provided no lawful basis to withhold the records pursuant to any of FOIA's nine exemptions to mandatory disclosure or to withhold any segregable, nonexempt portion of the records. *See* 5 U.S.C. § 552(b)(1)-(9); 5 U.S.C. § 552(a)(8)(A). NOAA has violated the Center's rights in this regard by withholding records that are responsive to the Center's FOIA request.

250. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in records requests to NOAA in the foreseeable future.

251. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, NOAA will continue to violate the Center's rights to receive public records under FOIA.

252. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

(1) Declare that each Defendant violated the Freedom of Information Act by failing to lawfully satisfy Plaintiff's nine FOIA requests, submitted on May 14, 2018, November 1, 2018, and November 20, 2018;

(2) Order each Defendant to search for any and all responsive records to Plaintiff's nine FOIA requests submitted on May 14, 2018, November 1, 2018, and November 20, 2018 using search methods reasonably likely to lead to discovery of all responsive records;

(3) Order each Defendant to produce, by a date certain, any and all nonexempt responsive records or segregable portion of the records and a *Vaughn* index of any responsive records or portion of responsive records withheld under a claim of exemption, at no cost to Plaintiff;

(4) Enjoin each Defendant from continuing to withhold any and all nonexempt responsive records or segregable portion of the records;

(5) Retain jurisdiction of this action to ensure the processing of Plaintiff's FOIA requests and that no agency records or portion of the records are improperly withheld;

(6) Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

(7) Grant such other and further relief as the Court may deem just and proper.

DATED: May 7, 2019

Respectfully submitted,

/s/ Ryan Shannon

Ryan Shannon (D.C. Bar No. OR0007)

Center for Biological Diversity

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Stephanie M. Parent (OR Bar No. 925908)

Pro hac vice pending

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